



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CORRESPONDENCE.

COMPETENCY OF WITNESSES.

Editor Virginia Law Register :

With deference, it is submitted there is a lack of mutuality in section 3348 of the Code, upon the question of competency of certain evidence. This section is short, and I quote it in full :

“And where such contract or transaction was personally and solely made or had with an agent of one of the parties thereto, and such agent is dead or otherwise incapable of testifying, the other party shall not be admitted to testify in his own favor or in favor of a person having an interest adverse to the principal of such agent, unless he be first called to testify on behalf of said principal or some person claiming under him, or the testimony of such agent be first read or given in evidence by his principal or other person claiming under him, or unless the said principal has first testified.”

This section has been interpreted in *Mutual Life Insurance Company v. Oliver*, 95 Va. 445.

My objection to the law as it now stands, is not that it excludes the evidence of the principal when the agent is disqualified, but rather that it allows the agent to testify when the principal is disqualified.

When a transaction is had solely between two persons, be they wholly or partly agents or principals, there is reason why the disqualification of one should render the evidence of the other incompetent. This is not far to see. But the disqualification of interest having been abolished, it is not so easy to see why the law should leave the agent a competent witness when the principal is disqualified, and at the same time make incompetent the principal, when the agent is disqualified. There is a lack of mutuality in the rule. I have known several cases in which I thought it operated a hardship against the estate of the dead principal.

Accepting as wise the innovation on the common law, abolishing incompetency on the ground of interest, it would appear both just and fair that either both principal and agent should, under the circumstances stated, be competent, or both incompetent. Or put the agent on the same ground as that occupied by the principal in the second subdivision of section 3346.

This inequality, I submit, should be corrected by the legislature.

FRANK T. GLASGOW.

Lexington, Va.